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Accompanying Circular.
Johns Street.
25th April 1844.

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ARTICLES OF AGREEMENT

made this 18th day of December in the year of our Lord 1843 between James Whitney of the City of St. John in the province of New Brunswick Merchant of the one part and Alexander Elliott of Halifax in the province of Nova Scotia Naval Storekeeper of the Dockyard at Halifax aforesaid for and on behalf of Her Majesty her heirs and successors under the direction of the Lords Commissioners for Executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland of the other part Witness that the said James Whitney for and in consideration of the sum of Four Thousand One Hundred and Fifty Pounds of sterling money of Great Britain to be to him paid upon the terms and under the stipulations hereinafter contained doth hereby covenant promise and agree to and with the said Alexander Elliott (on behalf of Her Majesty) that he the said James Whitney will during the continuance of this present Contract carry and convey as hereinafter provided Her Majesty's Mails (under which term all dispatches and letters are meant to be included) which shall at any time and from time to time by the Commissioners aforesaid or Her Majesty's Postmaster General or any of the Officers or Agents of the said Commissioners or Postmaster General be required to be conveyed between Halifax aforesaid and St. Johns in the Island of Newfoundland twice each way every calendar month the Mails which leave England during the months of April May June July August September October and November and once in each month during the months of December January February and March The said Mails to be carried and conveyed in a good and sufficient Steam vessel of not less than one hundred horse power during the months of April May June July August September October November and December and in a good and sufficient sailing vessel of not less than one hundred and twenty tons burthen during the months of January February and March under the stipulations hereinafter contained The said James Whitney doth hereby covenant promise and agree to and with the said Alexander Elliott (on behalf of Her Majesty) that he the said James Whitney shall and will at all times during the continuance of this contract provide maintain and keep seaworthy and in complete readiness for the purpose of conveying the said Mails a good substantial and efficient Steam vessel to be supplied and furnished with engines of not less than one hundred horse power the said vessel to be and while employed in the performance of the Contract shall be supplied and furnished with all necessary and proper engines machinery furniture stores and apparel and manned with competent Officers Engineers and a sufficient crew of able seamen and other men to be in all respects as to vessel machinery engines equipment and crew subject to the approval of the said Commissioners or the senior Naval Officer on the North American Station or such other person or persons as they or he shall from time to time appoint for that purpose the said James Whitney being required and bound to make such reasonable improvements in the said vessel her engines machinery and equipments as may be from time to time necessary and proper And also shall and will during the continuance of this Contract provide maintain and keep seaworthy a good substantial and efficient sailing vessel of not less than one hundred and twenty tons burthen new measurement which vessel shall be always supplied with all necessary and proper apparel furniture stores tackle masts yards sails anchors cables cordage boats pumps provisions and whatever else may be requisite and necessary for equipping the said vessel and rendering her constantly efficient for the service hereby contracted for and also manned with competent Officers and a sufficient crew and to be in all respects as to vessel equipments Officers and crew subject to such approval as aforesaid And also that he the said James Whitney shall and will during the continuance of this Contract diligently faithfully and to the satisfaction of the said Commissioners and also of the Naval Commander in Chief or senior Naval Officer on the North American Station and with all possible speed in every case convey twice each way in the months of April May June July August September October and November and once each way in the months of December January February and March as aforesaid Her Majesty's Mails in the said vessels as hereinafter mentioned And that a Steam Vessel so approved of equipped and manned as aforesaid with Her Majesty's Mails on board within twelve hours after the arrival at the port of Halifax from England of each of the Mail Steam Packets employed under a Contract with Samuel Cunard Esquire of Halifax or upon the arrival of the regular Mails from England in whatever way the same may be conveyed shall leave that port after receiving Her Majesty's Mails on board and

Conveyance
of Mails between
Halifax and
St. Johns for
£ 4150 per
annum.

Twice a month each
way with the English
Mails of April to
November inclusive.
Once do. of the four
other months.

Steam Vessel of 100
horse power to be
employed between
April and December
inclusive.
And Sailing Vessel
of 120 tons burthen
the other three
months.

Efficient Steam
Vessel to be provided

Do. Sailing
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Mails to be forward-
ed to St. John within
12 hours after the
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proceed to St. Johns in the Island of Newfoundland without loss of time with permission to touch at a port in Cape Breton as hereinafter provided and after remaining not more than two days at St. Johns (unless a longer stay shall be sanctioned by an authority in writing to the Commander of the vessel from the Lieutenant Governor of that port or the Postmaster there which written authority shall in every case be immediately transmitted by the Commander to the Secretary of the Admiralty and also to the Senior Naval Officer on the North American Station) and in case of such prolonged period of stay by the sanction aforesaid then immediately on the termination thereof shall depart thence for Halifax with Her Majesty's Mails on board (with the like permission to touch and remain at a port in Cape Breton as hereinafter mentioned) and there deliver the same to the Deputy Postmaster General or other person duly appointed to receive the same during the said months of April May June July August September October November and December And that a Sailing vessel so approved of equipped and manned as aforesaid shall in like manner with Her Majesty's Mails on board within twelve hours after the arrival at the port of Halifax from England of each of the Mail Steam Packets employed under the said Contract with the said Samuel Cunard or upon the arrival of the regular Mails at Halifax from England in whatever way the same may be conveyed once in each month during the months of January February and March proceed direct from Halifax aforesaid to St. Johns aforesaid and shall return from thence to Halifax aforesaid direct with Her Majesty's Mails on board under the same stipulations herein before mentioned as regards

Sailing Vessels not to touch at Cape Breton.

the Steam vessel but without any permission to stop or touch at a port in Cape Breton during the said months of January February and March Provided always nevertheless and it is hereby agreed that the port in the Island of Cape Breton at which the said Steam vessel shall have liberty to touch on her voyage to and from St. Johns aforesaid shall be

But Steamers may.

previously sanctioned by Her Majesty's Government or the Senior Naval Officer on the North American Station and may from time to time be changed with the like sanction

Stay confined to 24 hours.

but that the said Steam vessel shall not at any time remain longer than twenty four hours at any such port And that the said James Whitney shall and will carry and convey in the said Steam vessel all such Mails to and from such port in Cape Breton as may be required from time to time or shall be put on board by the Deputy Postmaster

Mails to be conveyed to and from Cape Breton.

General at Halifax or the Postmaster at such port in Cape Breton and that every Steam vessel and Sailing vessel which may be employed in the completion of this Contract shall at all times unless detained by the authority hereinbefore mentioned or prevented by storm tempest or some other unavoidable casualty be ready to receive the Mails at Halifax aforesaid upon their respective arrival from England as hereinbefore mentioned And that in case the Steam vessel to be employed under this Contract shall at any time during the continuance thereof be lost or destroyed by fire tempest or any other casualty

Steam Vessel lost to be replaced and Mails in the mean time to be conveyed in Sailing Vessels.

then and in every such case the said James Whitney shall without any unnecessary and unavoidable delay and within such reasonable time as may be required by the Naval Commander in Chief on the North American Station have the said Steam vessel replaced by another of similar power and description and in the mean time the said Mails shall be carried and conveyed in good and sufficient Sailing vessels of not less than one hundred and twenty tons burthen each and in such way and manner as shall be approved of by the Naval Commander in Chief on the North American Station And that the said Sailing vessels shall be at all times ready to receive the Mails at Halifax aforesaid upon the arrival of the said Mail Steamers from England That if during any of the winter months it should happen that the port of St. Johns Newfoundland shall be found to be inaccessible on account of the ice then and in such case Her Majesty's Mails shall by and

Mails to be landed and put on board at the expense of J. Whitney if St. Johns is inaccessible.

at the expense of the said James Whitney be landed and received on board at such port on the south west coast of the said Island as may be accessible and shall also at his expense be by him conveyed to and from St. Johns by land with the utmost possible dispatch the return Mails being dispatched from St. Johns within the same period as they are to be dispatched thence when a vessel employed in the performance of this Contract actually enters the port of St. Johns Provided always that as often as any change shall be made in the days of arrival at Halifax of the Steamers from England by the Cunard line or other conveyance by which the Mails may be brought from England a corresponding change shall when and so often as may be required be made in the time of departure from Halifax of the vessels employed in the performance of this Contract That the said James Whitney shall receive and allow to remain on board each of the vessels to be em-

If days of arrival of Mails from England are changed similar change to be made in the departure of Mails from Halifax.

Officer in charge
Must be on board

Authority

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landing
provided

Penalty
vessel not
proceed
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and £ 5
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Not to t
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Officer in charge of
Mails to be received
on board

Authority

Accommodation

Boat for
landing to be
provided

Penalty for
vessel not
proceeding at
proper time
£ 100

and £ 50 for
every 6 hours

Penalty for
delay £ 100

Not to touch
any where ex-
cept at Cape
Breton

employed in the performance of this Contract an Officer to be appointed by the said Commissioners or by the said Postmaster General to take charge of Her Majesty's Mails who shall be recognized and considered by the said James Whitney his Officers Agents and Seamen as the Agent of the said Commissioners in charge of Her Majesty's Mails and as having full authority in all cases to require a due and strict execution of the conditions of this Contract on the part of the said James Whitney his officers servants and agents and to determine every question whenever arising relative to proceeding to sea or putting into harbour or to the necessity of stopping to assist any vessel in distress or to save human life and that the decision of every such officer duly authorized to have the charge of Her Majesty's Mails shall in each and every of such cases be final and binding on the said James Whitney unless the said Commissioners or the said Commander in Chief or senior Naval Officer on appeal from the said James Whitney shall think proper to decide otherwise That a suitable first-rate cabin with appropriate bed bedding and furniture shall at the cost of the said James Whitney be provided and appropriated by him for and to the exclusive use and for the sole accommodation of every Officer in charge of Her Majesty's Mails and also a convenient and proper place of deposit on board with secure lock and key for Her Majesty's Mails and that each and every of the same Officers shall be victualled by the said James Whitney as a chief cabin passenger without any charge being made either for his passage or victualling That at each and every of the said ports or places to which the said vessels are to proceed in the performance of this contract Her Majesty's Mails shall be delivered and received as shall be directed by the Officer in charge of the said mails (if employed) who shall whenever and as often as by him deemed practicable or necessary be conveyed on shore and also from the shore to the vessel employed for the time being in the performance of this Contract together with or (if such Officer consider requisite) without Her Majesty's mails in a suitable boat of not less than four cars to be provided and properly manned and equipped by the said James Whitney and the directions of every such Officer shall in all cases be obeyed as to the mode time and place of receiving and delivering Her Majesty's mails but should the said Commissioners think it inexpedient to have any such Officer employed in that case the Commander of the said vessel for the time being employed in the service hereby contracted to be performed shall without any additional charge take care of and be responsible for Her Majesty's Mails and shall without loss of time personally receive the same from and deliver the same to the respective postmasters at Halifax and St. Johns Newfoundland a receipt being always given and taken for Her Majesty's Mails and such Commander (if required by the said Commissioners so to do) shall take the oath or declaration of office required by the regulations for the time being of the General Post Office That if at any time during the continuance of this Contract a proper and approved of vessel shall not proceed to sea from Halifax or Newfoundland as the case may be with Her Majesty's Mails on board at the time when the same ought to proceed to sea in pursuance of this Contract then and so often as any such default shall happen he the said James Whitney his Executors and Administrators shall and will pay unto Her Majesty her heirs and successors the sum of one hundred pounds and also a sum of fifty pounds for each successive period of six hours which shall elapse until such vessel shall actually proceed to sea from the said places respectively with Her Majesty's Mails unless it shall be made to appear to the satisfaction of the said Commissioners by the said James Whitney that such default arose from unavoidable accident stress of weather or other cause over which the said James Whitney had not and could not have had any control That if any vessel having Her Majesty's mails on board shall stop linger or deviate from the direct course of her voyage (except when authorized as aforesaid) or shall delay starting at the exact time or shall put back into port after starting without the sanction in each and every case of the Officer authorized to have charge of the said Mails then and in each and every of such cases and as often as the same shall happen the said James Whitney shall forfeit and pay unto Her Majesty her heirs and successors the sum of one hundred pounds That every vessel employed in the performance of this Contract shall as soon as the said mails are on board proceed without delay to sea and shall not touch at any intermediate port between Halifax and St. Johns Newfoundland excepting one of the ports of Cape Breton as before mentioned unless compelled to do so by stress of weather or other unavoidable circumstance without the express authority in writing of the said Commissioners or their

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retained out of
Bills

Service to com-
mence 17 April
1843 and ter-
minate 1 Sept.
1843

Subject to six
months notice

authorized agent and that Her Majesty's Mails shall be delivered on their arrival at the said respective ports without any loss of time That a bill shall be kept by the Commander of every vessel employed for the time being in the performance of the said service in such form as the said Commissioners shall at any time or from time to time direct and that there shall be accurately noted by such Commander on such bills the time of every arrival and departure of the vessel and that the same shall be signed by the said Commander and that one copy thereof shall be transmitted to the Secretary of the General Post Office London and another to the Secretary of the Admiralty by the first post after each return of the said vessel to Halifax Nova Scotia That every Officer to be appointed as aforesaid to have the charge of Her Majesty's Mails shall either alone or with such other persons as he may consider necessary have full power whenever and as often as he may deem it requisite to examine and survey in such manner as he may think proper all and every or any of the vessels employed or to be employed in the performance of this Contract and the hulls equipments and crew thereof on his giving notice in writing to the Commander or person acting as such for the time being of the vessel about to be examined of such his intention and if any defect or deficiency be ascertained and notice thereof in writing be given to such Commander or person acting as such and if the Commander or person acting as such shall not immediately or as soon as possible thereupon remedy replace or effectually repair or make good every such defect or deficiency he the said James Whitney shall in every such case forfeit and pay to Her Majesty her heirs and successors the sum of one hundred and fifty pounds sterling And the said Commissioners or the said Naval Commander in Chief or senior officer for the time being shall likewise have full power whenever and as often as they or he may deem it requisite to survey by any other Officers or Agents all and every the vessels employed and to be employed in the performance of this Contract and the hulls thereof and the engines machinery furniture tackle apparel boats stores and equipments of every such vessel and if any such vessel or any part thereof or any furniture tackle apparel boats stores or equipments shall on any such survey be declared by any of such Officers or Agents unseaworthy or not adapted to the service hereby contracted to be performed every vessel which shall be so disapproved of or in which such deficiency or defect shall appear shall be deemed inefficient for any service hereby contracted to be performed and shall not be employed again in the conveyance of Her Majesty's Mails until such defect or deficiency shall have been repaired or supplied to the satisfaction of the said Commissioners or Commander in Chief or senior Naval Officer as aforesaid the said James Whitney shall forfeit and pay to Her Majesty her heirs and successors the sum of one hundred pounds but it is hereby agreed that the payment of any of such two last mentioned penalties shall not in anywise release or discharge the said James Whitney from performing the service hereby contracted to be performed by some other efficient vessel or vessels nor from remedying replacing or efficiently making good the deficiency or defect or from being considered not to have committed a breach of this contract That the said James Whitney and all commanding and other Officers of the vessels to be employed in the performance of this Contract and all agents seamen and servants of the said James Whitney shall at all times during the continuance of this Contract punctually attend to all the orders and directions of the said Commissioners or of any of the Officers or Agents of them or of the General Post Office as to the landing delivering and receiving Her Majesty's mails or otherwise in the performance of this Contract and shall do all in their power to carry into full effect the stipulations hereby entered into by the said James Whitney And it is hereby agreed by and between the parties hereto that all and every the sums of money hereby stipulated to be forfeited and paid by the said James Whitney unto Her Majesty her heirs and successors shall be considered as stipulated or ascertained damages and shall and may be deducted and retained by the said Commissioners out of any monies payable or which may thereafter be payable to him under this Contract or the payment thereof may be enforced with full costs of suit at the discretion of the said Commissioners And it is hereby agreed and declared that the period during which the said service shall be performed as aforesaid shall commence on the seventeenth day of April next or on the arrival of the first Steamer from England in that month and shall continue until the first day of September in the year of our Lord one thousand eight hundred and forty eight and thenceforth until the expiration of six calendar months notice in writing which may be given by the said Commissioners or by any two of them

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or by one of their secretaries to the said James Whitney or by the said James Whitney to the said Commissioners to terminate the same And the said Alexander Eliott in consideration of the premises and of the said James Whitney his officers servants and agents strictly and punctually performing the contract hereby entered into by him doth for and on behalf of Her Majesty her heirs and successors agree with the said James Whitney that on his lodging or causing to be lodged from time to time in the office of the Accountant General of her Majesty's Navy certificates from the said Commander in Chief or senior naval officer of the due and faithful performance of the service hereby contracted to be performed they the said Commissioners on behalf of her Majesty will pay or cause to be paid to the said James Whitney by bills payable by her Majesty's paymaster general the sum of four thousand one hundred and fifty pound sterling per annum by equal quarterly payments But it is hereby contracted and agreed by the said James Whitney that he shall give and provide sufficient security to the satisfaction of the said Commissioners in the sum of one thousand pounds sterling that no further demand than the sum before mentioned of 4150 pounds sterling shall be made by him the said James Whitney his executors or administrators for the service hereby contracted to be performed by him And it is hereby further agreed and provided that the said James Whitney his executors or administrators shall not assign underlet or otherwise dispose of this contract or any part thereof and that in case of the same or any part thereof being assigned underlet or otherwise disposed of or of any breach of this contract on the part of the said James Whitney his executors or administrators it shall be lawful for the said Commissioners (if they think fit) by writing under the hands of them or any two of them or under the hand of any of their secretaries for the time being to determine this contract without any previous notice to the said James Whitney his executors or administrators or his or their agents nor shall the said James Whitney his executors or administrators be entitled to any compensation in consequence of such determination but even if this contract be so determined the said James Whitney shall not be thereby released from the payment of the sum of money hereinafter stipulated to be paid by him in case of any breach thereof And it is also agreed that the notices or directions which the said Commissioners or their secretary officers or other persons are hereby authorized and empowered to give to the said James Whitney his executors or administrators officers servants or agents may at the option of the said Commissioners or their secretary officers or other persons be either delivered to the masters or commanders or other officer agent or servant of the said James Whitney his executors or administrators in the charge or management of any vessel to be or while employed in the performance of this contract or be left for the said James Whitney with his agent in London or in Halifax (the name of which agents are to be made known by the said James Whitney to the said Commissioners) any notices or directions so given or left shall be as binding on the said James Whitney his executors or administrators as if personally served upon or left with him or them And in pursuance of the directions contained in a certain Act of Parliament made and passed in the twenty second year of the reign of King George the Third entitled "An Act for restraining any person concerned in any Contract Commission or Agreement made for the public service from being elected or sitting and voting as a member of the House of Commons it is hereby expressly declared and agreed and these presents are upon the express condition and the said James Whitney doth covenant for himself his heirs executors and administrators that no member of the House of Commons hath been or shall be admitted to any share or part of this Contract or agreement or to any benefit to arise therefrom And lastly for the due and faithful performance of all and singular the covenants conditions provisions clauses articles and agreements hereinbefore contained which on the part and behalf of the said James Whitney are or ought to be observed performed fulfilled and kept the said James Whitney doth hereby bind himself his heirs executors and administrators unto our sovereign Lady the Queen in the sum of five hundred pounds sterling to be paid to our said Lady Queen her heirs and successors by way of stipulated or ascertained damages agreed upon between the said Commissioners and the said James Whitney in case of the failure of the said James Whitney his executors or administrators in the due execution of this Contract or any part thereof In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written

Signed sealed and delivered at Halifax in the
province of Nova Scotia (where stamps
are not used) in presence of
(Signed) CHARLES TWINING
WILLIAM TWINING

(Signed)
JAMES WHITNEY (L S)
A ELIOT (L S) Naval
Storekeeper